

Counsel for the ResCap Borrower Claims Trust

In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

ny-1201418

The ResCap Borrower Claims Trust (the “Borrower Trust”), established pursuant to the terms of the Plan¹ filed in the above-captioned Chapter 11 Cases, as successor in interest to the above-captioned Debtors with respect to Borrower Claims, by and through its undersigned counsel, hereby submits this reply (the “Reply”) to the response filed by Philip and Sylvia Emiabata (the “Respondents”) [Docket No. 9049] (the “Response”) to the *ResCap Borrower Claims Trust’s Supplemental Objection and Reply In Support of Its Eighty-Second Omnibus Objection to Claims (No Liability Borrower Claims) as to Claim Nos. 3910 and 4085* [Docket No. 8810] (the “Supplemental Objection and Reply”).² The Borrower Trust respectfully states as follows:

REPLY

1. In the Response, the Respondents fail to address any of the legal and factual arguments in the Supplemental Objection and Reply, but rather assert that they should be provided the opportunity to take discovery from the Borrower Trust prior to filing a response to the Supplemental Objection and Reply. However, as was discussed in the Supplemental Objection and Reply, the Respondents are not entitled to discovery prior to sufficiently pleading a cause of action that would support a claim. Further, this Court already addressed the Respondents’ arguments regarding discovery in its *Order Denying Discovery Motions Filed by Philip and Sylvia Emiabata* [Docket No. 8854], which denied without prejudice the Respondents’ motion to compel discovery from the Borrower Trust and motion to extend time to

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Objection.

² The Court entered its *Order Granting ResCap Borrower Claims Trust’s Eighty-Second Omnibus Objection to Claims (No Liability Borrower Claims) as to Certain Claims* [Docket No. 8400] (the “Order”), which expunged the claims filed by the Respondents. Subsequently, the Respondents filed a *Motion for Reconsideration of Order Granting ResCap Borrower Claims Trust Eighty-Second Omnibus Objection to Claims Filed by Sylvia Emiabata* [Docket No. 8545], in which the Respondents stated that they had not received a copy of the Objection. The Borrower Trust agreed to a withdrawal of the Order solely as to the claims filed by the Respondents, and re-served the Objection on the Respondents [Docket No. 8568].

complete discovery, finding that both were premature. Thus, until the Court has determined that the Respondents have sufficiently pled allegations that would support a proof of claim against the Debtors' estates, they are not entitled to discovery from the Borrower Trust.

2. The Response does not address any of the other arguments made in the Supplemental Objection and Reply. As discussed therein, the Respondents have not met their burden of demonstrating that they hold a valid claim against the Debtors' estates, and as a result claim nos. 3910 and 4085 should be disallowed and expunged.

CONCLUSION

3. WHEREFORE, the Borrower Trust respectfully submits that the relief requested in the Objection should be granted in its entirety.

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